

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2012-007044-002 DT

12/11/2015

HON. ROSA MROZ

CLERK OF THE COURT
J. Matlack
Deputy

STATE OF ARIZONA

KIRSTEN VALENZUELA
RYAN PATRICK GREEN

v.

JAMES EDWARDS (002)

DANIEL R RAYNAK
STEPHEN M JOHNSON

CAPITAL CASE MANAGER

Request for Curative Instruction

The Court has considered the State's Request for Curative Instruction or Admission of Evidence Regarding Voluntariness Ruling, and the Defendant's Response. The Court does not need a Reply or oral argument to decide this issue.

On November 24, 2015, the defense cross-examined Detective Tyler Kamp regarding whether a court or a jury has ever determined that Detective Martin coerced, threatened or made promises to someone to induce that person into making statements. The State argues that this cross-examination left the jury with the misimpression that Detective Martin has been found to coerce or threatened someone into making a statement when Detective Martin has never been found to have coerced or threatened someone into making statements. The State requests that the Court either provide a curative instruction to the jury or allow the State to elicit testimony that no judge has ever found Detective Martin to have threatened or coerced a suspect into giving a statement, and that this Court found that the Detective Martin made an implied promise to the Defendant. The defense objects.

The Court finds that the way the questions were posed, the questions did leave a misimpression with the jury that Detective Martin has a practice of threatening, coercing and making promises to suspects during his interrogations. While it is true that the defense did use

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the word “or” in his questions, it was easy to miss those connector words because the defense attorney speaks rapidly in his natural speech pattern. The Court listened attentively through the exchange with Detective Kamp and missed a few of them until the Court reviewed the real-time transcript of the questioning.

As for the State’s proposed curative instruction, however, it has the danger of inviting the jury to speculate as to what statements the Defendant made that the Court precluded and speculate that the statements the jury did not hear were worse than what the statements actually were.

As to the State’s request to elicit testimony to correct the misimpression,

IT IS ORDERED that the State or the defense may elicit the following testimony from Detective Martin that to his knowledge: (1) no court has ever found that he coerced or threatened a suspect into making statements during his interview/interrogation of the suspect; and (2) only one court has ever found that he made implied promises to a suspect such that the suspect’s statement was inadmissible.

The defense argues that he should then be allowed to ask whether Detective Martin has ever spoken to juries after the trial such that he would know whether the juries found that he made threats, coercion or promises.

IT IS ORDERED that the defense **shall not** elicit whether Detective Martin has ever spoken to juries after the trial such that he would know whether the juries found that he made threats, coercion or promises. The defense must have a good faith basis to ask these questions. To the Court’s knowledge, there is no evidence that any jury found that Detective Martin made threats, coercion or promises to suspects he interviewed/interrogated. An attorney’s suggestion by question or innuendo of unfavorable matter which is not in evidence and for which no proof exists is improper and can constitute misconduct.” *State v. Payne*, 233 Ariz. 484, 512, 314 P.3d 1239, 1267 (2013). 139 Ariz. 98, 103, ¶ 116, 677 P.2d 261, 266 (1984). The Court is willing to reconsider this ruling if the defense can make an offer of proof that this evidence exists.

Supplement to the Record

The Court has reviewed the State’s Supplement to Record Regarding Admission of DNA Evidence, and the Defendant’s Response. The Court does not need a Reply or oral argument to decide this issue. This is a supplement to the record and does not require a ruling from the Court. If this is in fact a motion for reconsideration, it is denied.